Filed 4/26/19 In re Z.J. CA1/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re Z.J., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. Z.J., Defendant and Appellant.	A154395, A154780 (Contra Costa County Super. Ct. No. J1701116)

Appellant, a minor, pled no contest to two counts of unlawfully driving or taking a vehicle (Veh. Code, § 10851, subd. (a)) and was returned to his mother's custody on probation. Following a probation violation, the juvenile court ordered appellant removed from his mother's custody and placed in a group home. Appellant contends the court's findings that an out-of-home placement was in his best interests and that reasonable efforts had been made to prevent the need for removal were not supported by substantial evidence. He further contends the juvenile court imposed an unreasonable and unconstitutionally overbroad and vague probation condition. We conclude the probation condition challenged should be modified but otherwise affirm the orders.

I. BACKGROUND

In 2017, appellant was admitted to Contra Costa Regional Medical Center on a Welfare and Institutions Code[1] section 5150 hold for allegedly throwing scissors at his sibling and threatening to burn down the family home. Following the hold, appellant's mother was unwilling to regain custody of him because she was concerned he would harm family members. Contra Costa County Children and Family Services (CFS) filed a section 300 petition, and appellant was placed in a group home.

In January 2018, the Contra Costa County District Attorney filed a petition under section 602, subdivision (a), alleging unlawfully driving or taking a vehicle (Veh. Code, § 10851, subd. (a); count one) and receiving stolen property (Pen. Code, § 496d; count two). The record indicates this petition arose from a vehicle theft that occurred shortly before the section 300 petition. During that theft, appellant took, drove, and abandoned a vehicle with another individual.

In March 2018, the Contra Costa County District Attorney filed a second amended petition under section 602, subdivision (a), alleging the two counts from the original petition, as well as three additional counts: vandalism damage under $400 (Pen. Code, § 594, subd. (b)(2)(A); count three); unlawfully driving or taking a vehicle (Veh. Code, § 10851, subd. (a); count four); and being an accessory after the fact (Pen. Code, § 32; count five). The additional counts related to two new incidents. The first occurred at appellant's group home, in which appellant poured shampoo on a wall and rug, broke a cordless phone, and broke a plexiglass window, and the second was another vehicle theft, during which appellant's co-perpetrator allegedly pistol-whipped and shot at the victim.

Appellant pled no contest to one felony count of unlawfully driving or taking a vehicle and one misdemeanor count of unlawfully driving or taking a vehicle. The remaining counts were dismissed.

[1] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The court ordered a section 241.1 hearing to assess whether appellant's behavioral issues were best handled through the section 300 petition or the section 602 petition. At that hearing, appellant's counsel argued appellant's behavior stemmed from unresolved mental health issues and should not be criminalized. Counsel noted appellant has never consistently received his prescribed medication or been given an opportunity to stabilize on those medications. After considering various reports and a mental health assessment from juvenile hall, the court concluded appellant "has had a number of behaviors that I think are best addressed in the 602 realm as opposed to the 300 realm." The court recounted appellant's problematic behavior in various group home placements, and explained, "Looking at the actual offenses that have occurred and been sustained, I believe that the behavior is escalating, and that [appellant] needs very intensive and extensive resources through probation."

Having concluded appellant should be adjudged a ward of the court and not remain under section 300, the court agreed to place appellant in his mother's home for a trial period prior to determining disposition. Appellant successfully complied with his probation terms during that period, and at disposition the court ordered appellant placed with his mother under home supervision.

Approximately two months later, appellant violated his probation. Appellant removed his ankle monitor at approximately 2:00 a.m., left his mother's house, and attempted to burglarize a residence with another individual. Appellant's mother also believes he took her vehicle without her permission. This violation was sustained, and the matter scheduled for disposition.

At the dispositional hearing, the juvenile court ordered appellant placed "in a court-approved home or institution" that "meets his educational needs and requirements of his IEP [(individual education plan)]."

Appellant timely appealed from both the section 241.1 hearing order and the disposition order. In September 2018, this court granted appellant's request to consolidate the two appeals.

II. DISCUSSION

Appellant contends the juvenile court abused its discretion in committing him to a group home rather than returning him to his mother's custody, and his removal was not supported by substantial evidence. Appellant also raises various challenges to the electronic search condition imposed as part of his probation. We address each issue in turn.

A. *Order to Place Appellant at Group Home*

To determine the proper disposition for a minor, the juvenile court must consider public safety, victim redress, and the minor's best interests. (§ 202, subd. (d).) The disposition analysis also includes consideration of the minor's "educational, physical, mental health, and developmental-services needs." (Cal. Rules of Court, rule 5.651(b)(2)(D).) The court also must take into account (1) the minor's age, (2) the circumstances and gravity of the minor's offense, and (3) any prior history of delinquency. (§ 725.5.) In addition, the disposition may incorporate punishment, where consistent with the minor's rehabilitation and not imposed for purposes of retribution. (§ 202, subds. (b) & (e).)

We review a juvenile court's commitment decision for abuse of discretion. (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.) In doing so, we will affirm if there is substantial evidence to support the juvenile court's findings, indulging all reasonable inferences in support of its decision. (*In re Calvin S.* (2016) 5 Cal.App.5th 522, 527–528.) Under the substantial evidence standard of review, an appellate court reviews the record in the light most favorable to the findings of the trier of fact. (See *In re George T.* (2004) 33 Cal.4th 620, 630–631.) " ' " 'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.' " ' " (*Id.* at p. 631.)

1. Evidence of Probable Benefit From Placement at Group Home

Appellant argues the factual findings underlying the juvenile court's decision to place him in a group home rather than return him to his mother's custody were not supported by evidence. We disagree.

Appellant has various behavioral and educational needs. The probation report indicates appellant has been diagnosed with disruptive mood dysregulation disorder, conduct disorder, and attention-deficit/hyperactivity disorder, and has an IEP for emotional disturbance. These diagnoses are displayed through inappropriate language, defiance, impulsivity, hyperactivity, panic symptoms, difficulty focusing, and difficulty with emotional regulation that results in threats, aggression, and property destruction.

Since the age of seven, appellant has attended various nonpublic schools due to multiple expulsions. However, appellant continued to struggle with behavioral issues and has a history of aggressive and assaultive behavior in the specialized school setting. In October 2017, appellant committed the initial vehicle theft that gave rise to the original section 602 petition. Later that month, appellant was admitted to Contra Costa Regional Medical Center on a section 5150 hold for allegedly throwing scissors at his sibling and threatening to burn down the family home. Following the hold, appellant's mother was unwilling to regain custody of minor, and CFS determined appellant required a higher level of care than his mother could provide without support.

Despite being placed in multiple "level 14" group homes, appellant continued to struggle with his behavior. At his first placement, appellant vandalized the group home's property. Appellant was then placed in another group home but absconded within the month. Appellant then committed his second vehicle theft, during which appellant's co-perpetrator allegedly pistol-whipped and shot at the victim. Appellant was arrested and detained at juvenile hall. In less than a month, appellant accumulated 10 disciplinary referrals at juvenile hall for problematic behavior, such as failing to follow staff directions, refusing to attend school, banging and yelling during lockdown, and attempting to flood his room.

In discussing the proper disposition for appellant following the section 241.1 hearing, the probation officer noted appellant's "current behaviors and needs appear to be beyond [mother's] ability to control." The probation report explained appellant "displays a propensity to abscond and has not cooperated with EHSD [(Employment and Human Services Department)] services. [Appellant] now has a total of seven referrals to Probation, all involving violent behavior, threat of violence or property theft. [Appellant's] behaviors are concerning due to the risk they pose to [appellant's] safety and the safety of the community."

Despite these concerns, appellant was returned to his mother's custody at her and appellant's request. While his initial transition back to his mother's house was "excellent," appellant subsequently violated probation by removing his ankle monitor, leaving his mother's house, and taking her vehicle without permission. According to the probation report, appellant and a co-perpetrator entered the side yard of a residence and used a brick to break a window as part of an alleged attempt to burglarize the residence. When interviewed about his probation violation, appellant "did not express remorse for his actions and he was not forthcoming with his answers." He stated his probation violation "was not a big deal" and asserted he did not like home supervision "because it is too restrictive." Appellant also continued to engage in inappropriate behavior in juvenile hall.

The probation report raised serious concerns regarding appellant's "continue[d] delinquent actions," his "lack of remorse, his apparent inability to be forthcoming and his belief that his violation is not serious." The probation report concluded, "[Appellant's] continued defiant behavior appears to exceed what can be addressed by his parent in the home with community services." Accordingly, it recommended "out of home placement is necessary at this time," and found "his mental health diagnoses, his IEP documentation of Emotional Disturbance and his behavioral needs are appropriate for residential treatment."

The court adopted this recommendation, noting appellant's "behavior in the community has been escalating, and it's getting more and more dangerous. I think he

places himself at grave risk of harm and he's placing others in the community at grave risk of harm. . . . He seems to be out of control at home. [¶] I do think mom has tried, but it's just not working out." It concluded appellant shall be placed "in a court-approved home or institution and it must be one that meets his educational needs and requirements of his IEP. [Appellant] shall be detained in Juvenile Hall pending delivery to placement."

Appellant primarily relies on *In re M.S.* (2009) 174 Cal.App.4th 1241 (*M.S.*) to argue this evidence is insufficient to support his placement in a group home. But that case does not further appellant's position. In *M.S.*, this division expressly noted, "this is *not* a case in which the court failed to consider less restrictive alternatives . . . . Indeed, the minor does not even suggest that the court's dispositional order was an abuse of discretion . . . ." (*Id.* at p. 1250.) We then explained "the record demonstrates the court considered every available less restrictive placement, and gave reasons supported by the evidence why [alternative placements] were not appropriate." (*Id.* at p. 1251.)

Here, the juvenile court considered the available less restrictive placement—appellant's mother's custody. But appellant's conduct while residing with his mother evidences why home supervision is insufficient—he violated his probation when last placed under home supervision and displayed no remorse for doing so. While appellant argues he neither stole his mother's car nor attempted to commit a residential burglary,[2] it is undisputed appellant removed his ankle monitor, left his house in violation of probation, and provided a false name to police when detained. When asked about the incident, he blamed the home supervision program for being "too restrictive."

In addition, appellant's mother cannot meet his educational needs at this time. The probation report noted appellant's mother had been unable to enroll appellant in school because "he has previously been enrolled in all of the local special education

[2] Appellant objects to the juvenile court's alleged reliance on an "unproven and uncharged" burglary allegation when assessing his risk to the community. We need not address that issue because other evidence in the record adequately supports the juvenile court's disposition order. Likewise, appellant's argument that he has a tendency to run from placements to return to his mother merely suggests he may need a *more* restrictive placement.

schools and due to his poor behaviors during his previous enrollments, he has exhausted his eligibility to return to them." Accordingly, it was reasonable for the court to order appellant placed at a program that could provide the necessary educational resources.

Appellant argues the out-of-home placement is problematic because neither the court nor probation provided any assurance an appropriate program could be located. But appellant cites no authority for the proposition such an assurance is required before he could be removed from his mother's custody. Rather, the record supports the juvenile court's conclusion that home supervision is not appropriate, and a commitment to juvenile hall pending a group home placement is authorized by statute. (See § 202, subd. (e)(4) [authorizes the juvenile courts to impose sanctions, including "[c]ommitment of the minor to a local detention or treatment facility, such as a juvenile hall, camp, or ranch"].) Accordingly, the juvenile court did not abuse its discretion when concluding home supervision would be inappropriate and ordering an out-of-home placement.

2. Reasonable Efforts to Prevent Appellant's Removal from Mother's Home

Appellant next argues the juvenile court was not authorized to order appellant removed from his mother's custody absent a finding, supported by substantial evidence, that reasonable efforts had been made to prevent or eliminate the need for removal of appellant from his mother's custody. This premise is false.

Section 726 sets forth what a court must find in order to remove a minor who is adjudged a ward of the court from the physical custody of a parent or guardian. Specifically, the statute provides the court may not order that the physical custody be taken from a parent or guardian unless the court "finds one of the following facts: [¶] (1) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor. [¶] (2) That the minor has been tried on probation while in custody and has failed to reform. [¶] (3) That the welfare of the minor requires that custody be taken from the minor's parent or guardian." (§ 726, subd. (a).) The statute contains no requirement that the probation department prove by clear and convincing evidence that reasonable efforts have been made to prevent or eliminate the need for removal. Nor does the statute require the court make a

finding that reasonable efforts to prevent or eliminate the need for removal have been made, although the court here did make that finding. The statutes appellant cites—section 727.4 and title 42 United States Code section 671(a)(15)—discuss requirements for reasonable efforts to preserve and reunify families but do not require a showing by clear and convincing evidence that such reasonable efforts have been made before a ward can be removed from a parent's physical custody at disposition.[3]

Moreover, the evidence supports finding reasonable efforts were made. As discussed above, appellant's mother was unable to enroll him in school because he had already been enrolled in "all of the local special education schools and due to his poor behaviors during his previous enrollments, he has exhausted his eligibility to return to them." Even the public defender's office, which was working with appellant's mother to help locate a school, was unable to do so. The court did not critique these efforts or imply probation failed to pursue educational options, but rather noted the probation department may need to look at *out-of-state placements* to meet appellant's educational needs. Probation also initiated the "MSF/MFT" referral ordered by the court, and

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[3] Section 727.4, subdivision (d)(5) provides the definition of " 'Reasonable efforts' " as used in articles 15 through 18 (temporary custody and detention, commencement of proceedings, hearings, and judgments and orders, respectively, in wardship cases): "(A) Efforts made to prevent or eliminate the need for removing the minor from the minor's home. [¶] (B) Efforts to make it possible for the minor to return home, including, but not limited to, case management, counseling, parenting training, mentoring programs, vocational training, educational services, substance abuse treatment, transportation, and therapeutic day services. [¶] (C) Efforts to complete whatever steps are necessary to finalize a permanent plan for the minor. [¶] (D) In child custody proceedings involving an Indian child, 'reasonable efforts' shall also include 'active efforts' as defined in Section 361.7."

Title 42 United States Code section 671(a)(15) provides that in order for a state to be eligible for federal payments for foster care and adoption assistance, it must have a plan approved by the Secretary of Health and Human Services which meets various requirements, including that "reasonable efforts shall be made to preserve and reunify families— [¶] (i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and [¶] (ii) to make it possible for a child to safely return to the child's home." (42 U.S.C. § 671(a)(15)(B).)

requested he be enrolled in the first available services. However, those services had wait lists and appellant violated probation before being enrolled.

It is undisputed appellant violated probation by cutting off his ankle monitor, leaving his mother's residence, and lying to police about his identity. He continued to lie about his conduct—despite evidence and statements from his mother to the contrary—and refused to acknowledge the seriousness of his probation violation. Accordingly, there was no abuse of discretion.

B. *Probation Condition Regarding Electronic Devices*

At the disposition hearing, the juvenile court imposed an electronic search condition, which required appellant to submit his "cell phone or any other electronic device under [his] control to search of any medium of communication reasonably likely to reveal whether [he is] complying with the terms of [his] probation with or without a search warrant at any time of day or night. Such medium of communication includes text messages, voicemail messages, photographs, e-mail accounts and other social media and applications such as Facebook, Snapchat and Instagram." Appellant was also required to "provide any access codes in order to effectuate the search." The juvenile court imposed the condition based on appellant's ongoing "association with others" when engaging in "this sort of conduct" and to "effectively enforce the conditions of probation and monitor [appellant's] compliance."

1. Whether the Electronic Search Condition Violates *Lent*

Appellant first contends the condition is vague under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*). Specifically, appellant argues in part the electronic search condition is not reasonably related to future criminal activity because "neither the trial court nor the prosecutor claimed that based on this minor's crime, his entire social history, or his individual needs, such a search condition was necessary to avert future criminality" and "there was no showing that [appellant] used electronic devices in connection with any unlawful behavior in the past." We disagree.

A juvenile court placing a ward on probation "may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may

be done and the reformation and rehabilitation of the ward enhanced." (§ 730, subd. (b); *In re Sheena K.* (2007) 40 Cal.4th 875, 889.) The scope of the juvenile court's discretion in formulating terms of a minor's probation is greater than that allowed for adult probations "[b]ecause wards are thought to be more in need of guidance and supervision than adults and have more circumscribed constitutional rights, and because the juvenile court stands in the shoes of a parent when it asserts jurisdiction over a minor." (*In re D.G.* (2010) 187 Cal.App.4th 47, 52.)

The juvenile court's discretion, however, is not absolute. (*In re Victor L.* (2010) 182 Cal.App.4th 902, 910.) A probation condition is invalid under *Lent* if it " ' "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . ." ' " (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*), quoting *Lent, supra*, 15 Cal.3d at p. 486.) The *Lent* test is conjunctive—"all three prongs must be satisfied before a reviewing court will invalidate a probation term. [Citations.] As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality." (*Olguin*, at pp. 379–380.) Probation conditions are reviewed for abuse of discretion, i.e., when the "determination is arbitrary or capricious or ' " 'exceeds the bounds of reason, all of the circumstances being considered.' " ' " (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

Appellant relies on *In re Erica R.* (2015) 240 Cal.App.4th 907 to support his position. In that case, the minor admitted possession of Ecstasy. (*Id.* at p. 910.) The juvenile court imposed an electronic search condition based on the court's belief that " 'many juveniles, many minors, who are involved in drugs tend to post information about themselves and drug usage.' " (*Ibid.*) On appeal, the court found the condition unlawful under *Lent*. (*Erica R.*, at p. 915.) It concluded in part that the third prong of *Lent* was met because there was " 'nothing in [Erica's] past or current offenses or [her]

personal history that demonstrates a predisposition' to utilize electronic devices or social media in connection with criminal activity." (*Erica R.*, at p. 913.)

Here, however, we conclude that the third prong required to invalidate a probation condition—that the condition forbids conduct unrelated to future criminality—is *not* satisfied. Appellant's past unlawful conduct and his probation violation all involved the participation of other individuals. And, as part of his probation, appellant was ordered to have no contact with those individuals associated with appellant's past unlawful behavior or "anyone known by the minor to be disproved [*sic*] of by the Deputy probation officer or by his parents." However, appellant has demonstrated an inability to be forthcoming about his conduct and contacts, including his connections to such individuals. Accordingly, the condition "reasonably relates to enabling the effective supervision of [appellant's] compliance with other probation conditions," and will serve to enforce such terms.[4] (See *In re P.O.*, *supra*, 246 Cal.App.4th at p. 295.)

2. Whether the Electronic Search Condition is Overbroad and Vague

Appellant argues the electronic search condition should be stricken as overbroad because it did not limit the types of data that could be searched for the limited purpose of furthering his rehabilitation. Appellant further contends the electronic search condition fails because it does not specify *how* such data should be accessed and the reference to "electronic devices" is impermissibly vague. We agree this search condition is overbroad and thus must be modified so it does not unduly infringe on appellant's privacy rights.

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[4] We recognize the divisions of this appellate district have reached different conclusions regarding electronic search conditions. (See, e.g., *In re Juan R.* (2018) 22 Cal.App.5th 1083, review granted July 25, 2018, S249256 [Division Five upholding condition as reasonable and not overbroad]; *In re P.O.* (2016) 246 Cal.App.4th 288 [this division holding condition reasonable but overbroad]; *In re J.B.* (2015) 242 Cal.App.4th 749 [Division Three striking condition as unreasonable].) Some of these courts "have concluded *Lent* requires a condition to have a particularized tie between the minor's past conduct and the use of electronics," while others believe "such a conclusion is inconsistent with *Olguin*." (*Juan R.*, at p. 1091.) This division has already concluded that electronic conditions can be imposed under *Olguin* to enable probation officers to supervise their charges even if there is no particularized tie between the crime and the use of electronics. (See *P.O.*, at p. 296.)

We review appellant's constitutional challenges to this probation condition de novo. (*In re P.O., supra,* 246 Cal.App.4th at p. 297.)

When a probation condition imposes limitations on a person's constitutional rights, it " 'must closely tailor those limitations to the purpose of the condition' "—that is, the probationer's reformation and rehabilitation—" 'to avoid being invalidated as unconstitutionally overbroad.' " (*Olguin, supra,* 45 Cal.4th at p. 384; *In re Victor L., supra,* 182 Cal.App.4th at p. 910.) "The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the [probationer]'s constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement." (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.) " ' "Even conditions which infringe on constitutional rights may not be invalid [as long as they are] tailored specifically to meet the needs of the juvenile." ' " (*In re Tyrell J.* (1994) 8 Cal.4th 68, 82, disapproved on other grounds in *In re Jaime P.* (2006) 40 Cal.4th 128, 130.)

Like other courts, we agree the electronics search condition can implicate constitutional privacy rights. However, we do not find a constitutional impediment to allowing probation or peace officers to search data likely to reveal associations with co-perpetrators or other criminal activities by a minor so long as the electronic search condition is narrowly tailored to promote the minor's rehabilitation. (*In re P.O., supra,* 246 Cal.App.4th at p. 298; *People v. Appleton* (2016) 245 Cal.App.4th 717, 719.) As other courts have observed, many types of data available on a cell phone or electronic device would not fall into the category of revealing such associations or other crimes. (See, e.g., *P.O.,* at p. 298; *Appleton,* at pp. 719, 725 [noting cell phones may hold "a large volume of documents or data, much of which may have nothing to do with illegal activity," including, for example, "medical records, financial records, personal diaries, and intimate correspondence with family and friends"].)

Here, the condition is related to appellant's rehabilitation. The juvenile court imposed the condition because of legitimate concerns that appellant was continuing to associate with people who support and encourage criminal activities. While appellant

argues an electronic device was not utilized in his criminal activities or probation violation, he ignores the fact that all of these activities involved co-perpetrators. In particular, a passenger in the second stolen vehicle informed the police appellant "contacted him and asked if he wanted to hangout [*sic*]."

Appellant argues the electronic search condition does not limit the types of data subject to search to those that would ensure he was complying with his probation and not associating with inappropriate individuals. But the search condition does impose such a limit. Specifically, it states the search is limited to "any medium of communication *reasonably likely to reveal whether you're complying with the terms of your probation* . . . ." (Italics added.) However, the second sentence, which arguably addresses only those media of communication referenced in the first sentence ("*Such* medium of communication includes . . . ." (italics added)), does not expressly contain such a limitation. Accordingly, in the interest of clarity and expediency, we modify the condition ourselves to confine the search of any medium of communication to those where evidence of criminality or probation violations may be found, including but not limited to text messages, voicemail messages, photographs, e-mail accounts, and other social media and applications such as Facebook, Snapchat, and Instagram (including direct messaging).[5]

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[5] Appellant also contends the search condition implicated his freedom to communicate and gather information, citing *In re M.F.* (2017) 7 Cal.App.5th 489. But that case involved a restriction on a minor's *possession* of electronic devices. (*Id.* at p. 493.) Nothing in the probation condition at issue restricts appellant's right to possess any electronic devices. Likewise, appellant argues the probation condition may raise third party privacy concerns. But a trial court need not give any more consideration to such interests in imposing electronics search conditions than it must in imposing standard search conditions. (Cf. *In re J.E.* (2016) 1 Cal.App.5th 795, 804, fn. 6, review granted Oct. 12, 2016, S236628.) As with standard search conditions, electronics search conditions are limited to items or places within the probationer's control, regardless of whether that control is exclusive. And with juveniles, the probation conditions must be specifically tailored to facilitate the minor's rehabilitation, further limiting the potential that a search will impact a third party's privacy. (See part II.B.1., *ante*.) Moreover, courts have concluded a probationer does not have standing to assert the privacy rights of

Appellant next contends the condition is overbroad because it fails to specify how the data should be accessed, apart from identifying his "cell phone or any other electronic device under your control." But identification of appellant's "cell phone or any other electronic device under your control" is sufficiently specific to clarify how a probation or peace officer may access such data. (See, e.g., *In re Q.R.* (2017) 7 Cal.App.5th 1231, 1236–1237 [concluding phrase "electronic device" not overbroad]; *In re P.O.*, *supra*, 246 Cal.App.4th at p. 300 [upholding electronic search condition that applies to " 'all electronic devices under your control' "].)

Finally, appellant relies on *In re I.V.* (2017) 11 Cal.App.5th 249 to argue the phrase "electronic devices" is vague "because there are many items that are considered electronic devices." In *I.V.*, the search condition required the minor "to submit his 'person, property, or vehicle, and any property under [his] immediate custody or control to search . . . .' " (*Id.* at pp. 259–260.) The minor asserted the search condition was vague because it may encompass electronic devices and data. (*Id.* at p. 260.) The Court of Appeal rejected this argument, holding the condition was not vague because, reasonably construed, it only applies to tangible physical property and not electronic data. (*Id.* at p. 262.) The court noted if an electronic data search is a condition of probation, then "the court must impose an explicit search condition pertaining to electronic data." (*Ibid.*) Here, however, the court did impose a specific probation condition pertaining to electronic data. And the reference to appellant's "cell phone or any other electronic device" is standard among such conditions. (See, e.g., *In re Juan R.*, *supra*, 22 Cal.App.5th at p. 1086, rev. granted [upholding electronic search condition encompassing " 'electronic devices . . . including cell phones over which the minor has control over [*sic*] or access to' "]; *In re P.O.*, *supra*, 246 Cal.App.4th at p. 300 [upholding electronic search condition that applies to " 'all electronic devices under your control' "].) Because the search condition provides examples of both the types of electronic devices

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those third parties when challenging a condition of probation. (See, e.g., *In re J.B.*, *supra*, 242 Cal.App.4th at p. 759.)

and the media of communication subject to the condition, the condition is not unconstitutionally vague. (Accord *In re Malik J.* (2015) 240 Cal.App.4th 896, 904–905 [rejecting vagueness challenge to phrase " 'any electronic devices' " because search condition provided examples of devices (cell phones, computers, and notepads) subject to search. " '[C]onditions [of probation] need not be spelled out in great detail in court as long as defendant knows what they are . . . .' "].)[6]

III. DISPOSITION

The electronic search condition imposed by the juvenile court at the dispositional hearing on June 26, 2018, which was set forth as follows: "[S]ubmit your cell phone or any other electronic device under your control to search of any medium of communication reasonably likely to reveal whether you're complying with the terms of your probation with or without a search warrant at any time of day or night. Such medium of communication includes text messages, voicemail messages, photographs, e-mail accounts and other social media and applications such as Facebook, Snapchat and Instagram," is modified to read: "Submit cell phones or any other electronic devices under your control to a search of any medium of communication reasonably likely to reveal whether you are complying with the terms of your probation or are involved in criminal activity with or without a search warrant at any time of day or night. Such a search of any medium of communication is limited to those where evidence of criminality or probation violations may be found, including but not limited to text messages, voicemail messages, photographs, e-mail accounts, and other social media and applications such as Facebook, Snapchat, and Instagram (including direct messaging)." As so modified, the judgment is affirmed.

[6] Appellant does not challenge the juvenile court's order requiring him to "provide any access codes in order to effectuate the [electronic] search [condition]." Accordingly, we need not address the validity of that requirement.

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Margulies, J.

We concur:

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Humes, P. J.

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Banke, J.

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